The grievant stated that she suffered a severe panic attach due to these comments and was taken to the hospital for tests. On-the-air comments, such as the following, apparently continued on a steady basis from July of 1986 to January of 1988, "suggesting" that she was a promiscuous person, that she had oral sex and intercourse with large numbers of people, that she was mentally unstable and had sexually transmitted diseases, that she was having sex with a number of the Pittsburgh Penguins as well as members of the U.S. Marine Corps, and the fact that she knows the hotline numbers for the Center for Disease Control by heart

"It says, 'Let go of my ears, I'm doing the best I can.'"

There is no question that this "joke" alludes to the performance of oral sex.

The grievant did not actually hear the joke as it was originally broadcast. Rather, one of the disc jockeys played a tape of it for her shortly afterwards, just several minutes before she was to read the news. Upon hearing the "joke", the grievant became extremely distraught and began shaking. She testified that she became so emotionally devastated and humiliated that she could not go on the air. She went looking for the program director but he had yet to arrive, so she left the station shortly thereafter. When the general manager, Mr. Tex Meyer, arrived a few minutes later, he heard bits and pieces of what had occurred and immediately began an investigation. He pulled Quinn and Banana off the air and met with them as well as his program director. Another disc jockey was brought in to finish their show. The grievant's two remaining news casts that morning were not aired. As soon as the grievant got home, she called the station and attempted to contact the program director but he was not available. The grievant returned later that day to the station and wanted to resume her work. However, because of what had transpired, she was placed on leave of absence with pay until an investigation could be completed.

On January 27, 1988, a meeting was held with all parties. The grievant's employment was terminated on January 29, 1988, for

flagrant neglect of duty. Her subsequent claim for severance pay was denied based upon the forfeiture language contained in Article 7 of Schedule I, thus giving rise to the within grievance.

ISSUE

Whether the actions of the grievant in leaving the radio station premises without completing her assigned duties constituted a flagrant neglect of duty which authorized the Company to withhold payment of severance pay?

POSITION OF THE EMPLOYER

It is a well settled principle of Arbitration Law that an employee who is confronted with a situation in his/her working environment which he/she believes to constitute a violation of

psychiatrist for quite some time and Dr. Orbison never contacted him before issuing a report. Moreover, the psychiatrist, was not called to testify. The only information utilized by Dr. Orbison was transmitted to him by the grievant in a two hour interview "from her perspective". Dr. Orbison reviewed no medical records whatsoever. Finally, Dr. Orbison admitted that a diagnosis of a personality disorder cannot be made in one short interview.

Despite all of the above, the grievant asks the Arbitrator to accept Dr. Orbison's opinion that she was incapable of performing her duties on the morning of January 22, 1987. This is despite the fact that she was medically capable of announcing her intent to sue the Employer before leaving the premises, she was capable of calling the station and advising she would have a statement for them later that day, she was capable of meeting with her attorney and, finally, she was capable of attempting to complete her duties later that afternoon. Moreover, she did not call her psychiatrist on January 22, 1987, to seek medical help as one might expect. Such facts are not uncommon in a situation where a terribly angry employee strikes out at her Employer in the heat of the moment only to realize later on that she has made a terrible mistake and tries to return to work.

All of the above facts lead to the conclusion that the grievant's condition from the morning of January 22, 1987, was not such that she was incapable of performing her duties.

In addition, the exception argument of the grievant should be rejected based upon the fact that it was two years in the

making. The exception usually occurs when an Employer issues a directive to an employee which the employee believes would lead to a serious health hazard. The employee then, on the spur of the moment, refuses. In this matter, the grievant alleges violations of her rights causing emotional and physical harm dating back to February, 1986. The grievant had a 23 month period within which to file a formal grievance and have the matter resolved. She did not. Therefore, the grievant was not out of the blue placed in the position of fear for her physical well-being which caused her to bolt from her duty station.

Finally, the grievant is involved in the entertainment business. The grievant is part of the entertainment vehicle and is involved in the interplay with the other on-air talent. The grievant knew of and accepted this role as evidenced by her testimony that in the past she willingly engaged in this banter, that at one time she showed up at the station in a very revealing outfit, and often made suggestions that she wanted to be nude. Thus, the instant dispute should be viewed in a context which differs substantially from the normal industrial work place environment.

POSITION OF THE UNION

The burden of proof is upon the Employer to establish that the grievant was terminated due to a flagrant neglect of duty. The only witness for the Employer was the general manager, Tex Meyer, whose explanation of the reason for the discharge falls

far short of this heavy burden. Even if the Employer is believed to have met its burden, there is no question that the grievant's position must prevail due to the unconscionable, reckless, malicious, intolerable and outrageous actions towards the grievant which forced her actions of January 22, 1988. These actions were communications uttered to the hundreds of thousands of listeners of WBZZ and implied that the grievant had engaged in indiscriminate oral sex with large numbers of persons; that she is promiscuous; has sexually transmittable diseases; and is an otherwise loose woman. The grievant testified that she forcefully communicated to the disc jockeys, to her program director and others of the terrible health consequences which these statements were causing her. Dr. David Orbison testified on behalf of the grievant that in his expert opinion that due to the outrageous actions of Quinn and Banana over the two year period from February 1986 to January 1988, she was experiencing an increasing deterioration in her self-esteem, that these actions caused her to suffer panic attacks and these panic attacks rendered her unable to perform her duties at WBZZ. The grievant's leaving the station on January 22, 1988, was caused by the malicious, unconscionable and outrageous actions of WBZZ's employees. It is difficult to imagine a more outrageous case of inhumane treatment towards an individual.

FINDINGS AND DISCUSSION

Because of the unique nature of the radio entertainment business and its dependency on ratings, the Employer must be accorded wide latitude in being able to change on short notice the format of its programming as well as accompanying personnel in an effort to find a larger audience. Because of this, the Collective Bargaining Agreement permits the "termination" of announcers on a non-cause basis. In exchange for this ability to

mitigating circumstances that would permit her to avoid using the grievance process and resort to self-help by walking off the job, the Employer will have sustained its burden of proving that her actions were, in fact, a flagrant neglect of duty.

Arbitrators often deny or limit requested relief, not withstanding the merits of the original complaint, where the grievant has resorted to self-help rather than to the grievance procedure. An important exception to the general rule of "obey and grieve" exists where obedience to orders would involve an unusual health hazard or similar sacrifice. However, such exceptions are viewed quite narrowly and must be supported by clear and convincing evidence. The Employer has raised some substantial questions as to the existence of this health hazard exception offered by the grievant. However, other possible exceptions to the duty to obey orders exist under circumstances where the order commands the performance of an immoral act, or would humiliate the employee or invade some personal right which is considered inviolable. Therefore, let us closely examine the events that transpired within to determine whether such an exception exists.

I agree with the argument put forth by the Employer that the individuals involved in this grievance are in the entertainment business, which differs considerably from the normal industrial work environment. It is also clear that the grievant was required to be involved in banter and interplay with the other

the fact that she must participate to some degree in this type of arrangement. The evidence also reflects that the grievant willingly participated in the "banter" at various times even to the degree that during the program on Halloween she wore a revealing/risque costume to work.

However, I find that the banter/interplay the grievant was subjected to (as detailed in the Background section of this opinion) goes well beyond anything that could even remotely be considered part of one's job requirement. The jokes and suggestive remarks that were directed to her were lewd, offensive, sophomoric, in bad taste and beyond anything that an employee should have to be subjected to--even if they are part of

participated in some mild risque bantering, she did so either because she wanted to or, as is more often the case, because she wanted to fit in and go along with the crowd. Such participation, however, in no way waives her right to object to the extremely outrageous remarks publicly directed to her nor makes her fair game for such insults. One must keep in mind these comments were not just made around the office or shop floor, as is normally the case. They were publicly broadcast to the thousands of people who listen to "The Quinn and Banana Show". The Employer argues that the highly suggestive remarks of the disc jockeys continued for quite some time, so one must question why the need for self-help arose at this point and why a grievance was not filed earlier. I believe one very plausible explanation exists, i.e., the vile and filthy joke perpetrated upon the grievant on January 22, 1988, was, in fact, the straw that broke the camel's back.

There is no question, under these circumstances, that the grievant's action of walking off the job was not only understandable, but more importantly, was justifiable. The conduct on the part of the disc jockeys was degrading, humiliating and a serious invasion of her personal rights and dignity. I would find it unreasonable to require the grievant to have remained on the job after being subjected to such vile and lewd insults and be expected merely to file a grievance. These circumstances are a narrow exception to the self-help rule and

Finally, I believe that the Employer was aware of or at least strongly suspected the grievant's negative reaction to these on-going lewd comments because of the general manager's reaction to the situation on the morning of January 22, 1988. When arriving at the station and learning that the grievant walked off in anger, the general manager did something I view as extremely drastic and unusual. He immediately pulled the two disc jockeys off the air. I find it very strange that he would abruptly stop an on-going program over an incident that the audience was certainly not aware of, and under circumstances where his investigation could have waited until the program was over. In fact, by abruptly stopping the program, the general manager is certainly sending a message to the audience that something was wrong, under circumstances where there was no immediate need to even hint that trouble existed. This implies to me that he knew of the on-going seriousness of the situation and the tension between the grievant and the disc jockeys, and he realized the time had finally come when the straw broke the camel's back.

AWARD

The grievance is sustained. The grievant is to receive payment for all severance benefits to which she is entitled together with interest at the rate of 6% per anum from February 5, 1988.

DATE: Nov. 16, 1988
Pittsburgh, Pennsylvania

Ronald F. Talarico
Arbitrator

ATTACHMENT NO. 3

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

EZ COMMUNICATIONS, INC., WBZZ-FM,	)	
Plaintiff,	)	
vs.	)	Civil Action 88-2636
AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS,	)	
Defendant.	)	

OPINION

ZIEGLER, District Judge

EZ Communication, Inc., WBZZ-FM brings this action pursuant to Section 301 of the Labor Management Relations Act, as amended, 29 U.S.C. § 185, to vacate the award of an arbitrator that granted severance pay to Elizabeth Randolph, a former news director at WBZZ-FM, the radio station owned and operated by EZ Communications. See Plaintiff's Exhibit E. The American Federation of Television and Radio Artists, a labor organization and party to a collective bargaining agreement with EZ Communications, represented Randolph in her claim for severance pay.

Randolph was employed by plaintiff as a news director for WBZZ-FM from 1985 until January, 1988. Her duties included reading the news twice during each hour of "The Quinn and Banana Show," a morning radio show featuring disc jockeys and local radio personalities, Jim Quinn and "Banana" Don Jefferson. It

is common practice for disc jockeys to engage in humorous exchanges with various reporters on the shows and Quinn and Banana often joked with Randolph while on the air. However, in 1986, Quinn and Banana began to recite tasteless, sexual quips about Randolph on the air while she was on vacation. The statements suggested that Randolph was sexually promiscuous and that she had sexually transmitted diseases, albeit in a joking manner.

As a result of the outrageous jokes directed at her, Randolph experienced anxiety attacks, difficulties in functioning on the air and working with Quinn and Banana in general. She was eventually admitted to a hospital due to the emotional trauma she suffered as a result of the ridicule. Thereafter, the on-the-air joking included jokes concerning Randolph's mental status, suggesting that she was instable, in addition to suggestions that she was sexually indiscriminate.

Attempts by Randolph to bring this shoddy treatment to an end by discussing her displeasure with superiors at the station were ineffective. Finally, on January 22, 1988, during the "Friday Morning Joke-Off" segment of the "Quinn and Banana Show," a disc jockey from a sister station to WBZZ-FM in St. Louis, Missouri, called the station on the air and made Randolph the butt of his joke, which referred to oral sexual activity in an offensive manner. The joke was played back for Randolph by Quinn or Banana just before she was to do a news report on their

show. Randolph became too distraught to perform and left the station.

Later that day, Randolph returned to the station to resume her news duties, but she was placed on leave of absence pending an investigation. One week later, Randolph's employment was terminated for flagrant neglect of duty related to her sudden departure from the station on January 22, 1988. As a result of her termination for what plaintiff alleges to be just cause under the collective bargaining agreement, plaintiff denied the claim of Randolph for severance pay.

Presently before the court are the cross motions of the parties for summary judgment. EZ Communications contends that the arbitrator exceeded his authority in numerous respects. Defendant disagrees. In keeping with well established principles of federal labor law, the arbitrator's award must be sustained so long as it "draws its essence from the collective bargaining agreement." Graphic Arts International Union v. Haddon Craftsmen, 796 F.2d 692, 694 (3d Cir. 1986).

The arbitrator interpreted the relevant portions of the collective bargaining agreement as an agreement by the employer to pay announcers severance pay unless the employee is guilty of "flagrant neglect of duty, drunkenness, dishonesty or other serious cause." Plaintiff's Exhibit E at 10; Plaintiff's Exhibit A, Schedule 1, B. Staff Working Conditions at ¶ 7.

EZ Communications does not dispute the interpretation of the agreement in this regard. Rather, plaintiff asserts that

Randolph is not entitled to severance pay because the act of leaving the premises of WBZZ-FM on January 22, 1988, without performing newscasts, constituted a flagrant neglect of her duties and that, if she felt that she was being subjected to sexual harassment on the job, she was required to file a formal grievance rather than resort to self help by walking off the job.

The arbitrator disagreed with plaintiffs'

our view, the arbitrator had authority bottomed in the bargaining agreement to find that the act of walking off the job was neither a flagrant neglect of Randolph's employment duties nor was she required to file a formal grievance to protest the degradation to which she was exposed as a result of the insensitivity of other employees of plaintiff.

The Supreme Court has defined our meager authority to review the award of the arbitrator, under the circumstances:

> Courts . . . do not sit to hear claims of factual or legal error by an arbitrator as an

Postal Service v. National Association of Letter Carriers, 839 F.2d 146 (3d Cir. 1988). The motion of plaintiff for summary judgment will be denied, and defendant's motion will be granted.

A written order will follow.

DATED: October 16, 1989

Donald E. Ziegler
United States District Judge

cc: Counsel of record.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

EZ COMMUNICATIONS, INC., WBZZ-FM, Plaintiff,	)	
vs.	)	Civil Action 88-2636
AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS, Defendant.	)	

ORDER OF COURT

AND NOW, this 16th day of October, 1989,

IT IS ORDERED that the motion of plaintiff for summary judgment be and hereby is denied;

IT IS FURTHER ORDERED that the motion of defendant for summary judgment be and hereby is granted.

Donald E. Ziegler
United States District Court

cc: Counsel of record.

FORM 3 Court C.P.- 1980

ATTACHMENT NO. 4

RECO

IN THE

Court of Common Pleas

OF THE

COUNTY OF ALLEGHENY, PA.

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COURT OF ALLEGHENY

FILED
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PROTHONOTARY
ALLEGHENY COUNTY

- Civil Division -

Elizabeth Nelson Randolph
a/k/a Liz Randolph

No. GD88-027

Issue No. 13738

Judge John L. Mu

Court Reporter Debbie

vs

Donald Jefferson, a/k/a Banana Dan Jo
Burns, E-Z Communications, Inc. a Corpo

VERDICT

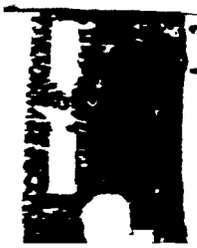
AND NOW, to-wit, this 14th day of February, 1990, the Jury in the above entitled case, finds For the Plaintiff on all three (3) counts defamation, intentional infliction of emotional distress invasion of privacy. We the jury award to the (for) Compensatory Damages total of $162,500.00 and (for damages) total of $487,500.00. (for) additional we the Plaintiff $13,500.00 lost wages and $30,204. medical expenses).

Total 694,204.00

Helen Bauer

FOR COURT USE ONLY

Date Jury Sworn _____ Verdict Time _____



1. On the issue of defamation, do you find:

For Plaintiff ✓ For the Defendant

3. On the issue of invasion of privacy, do you find:

For Plaintiff X For All Defendants _____

(a) If you find for all Defendants, do not complete (b), (c) or (d) below, but go on to question 4.

(b) If you find for Plaintiff on the issue of invasion of privacy, indicate which of the defendants you find liable for invasion of privacy:

1. Donald Jefferson X
2. James Quinn X
3. EZ Communications X

(c) If you find for Plaintiff on the issue of invasion of privacy, indicate the amount of damages, if any, for which you find the Defendants liable for invasion of privacy:

(d) Compensatory damages, if any: $ 48,750.00
Punitive damages, if any: $ 146,250.00

4. If you have awarded any damages to Plaintiff, please state the total amount of damages awarded to Plaintiff all issues. If you have found for all Defendants on all issu you should not complete the balance of this form.

Total Compensatory damages, if any: $ 162,500.00
Total Punitive damages, if any: $ 487,600.00

DECLARATION

Lewis I. Cohen hereby declares under penalty of perjury that the following is true:

On June 7, 1991 I attempted to review the files in the Office of the Prothonotary in the Court of Common Pleas in Pittsburgh, Pennsylvania of the following two actions: G.D. 88-02730 and G.D. 89-22010. As part of the file there was included an envelope which was sealed. I asked an employee of the Clerk's Office named Terry Sands whether I could review the contents of the envelope. Mr. Sands checked with another person, and then opened the envelope for me and handed me the transcript of the May 24, 1991 hearing before Judge John L. Musmanno. I asked Mr. Sands if I could xerox the transcript. He told me that was not permitted, but that I could make whatever notes I wanted of the transcript. I then copied the transcript verbatim except for that portion dealing with mutual releases. Attached hereto is a typewritten copy of the text from those verbatim notes.

Prior to the sealing of the record ordered at the settlement conference, I had inspected the record and obtained copies of a number of documents, including the Amended Complaint in GD88-02730; the Complaint and Amended Complaint in GD89-22010; the jury verdict in GD88-02730 and accompanying Interrogatories; the Court's August 17, 1990 Order disposing of Defendants' Motion For

Post Trial Relief; the transcript of a February 13, 1990